IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Civil Writ Petition No. 851 of 2003 (S/S)

Atul Kumar Sharma …… Petitioner.

Versus

State and others …… Respondents.

Date of decision: 28, October 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant.

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

WRIT PETITION NO. 851 (S/S) OF 2003

Atul Kumar Sharma, a/a 25 years S/o Late Matura Dutt Sharma R/o 0-10 Rudra Vihar Colony Rudrapur District Udham Singh Nagar.

……Petitioner.

Versus

1. **State of Uttaranchal, through the Secretary, Public Works Department Govt. of Uttaranchal at Dehradun.**
2. **Chief Engineer, Level-1, Public Works Department, Uttaranchal, at Dehradun.**
3. **Superintendent Engineer, 53, Circle Public Works Department Haldwani District Nainital.**
4. **Executive Engineer, Provincial Division, Public works Department, Rudrapur District Udham Singh Nagar.**
5. **State of U.P. through the Secretary, Public Works Department, Govt. of U.P. at Lucknow.**

……Respondents.

Mr. B.D. Upadhyaya, learned counsel for the petitioner.
Standing counsel for the respondent no. 1 to 4
Smt. Beena Pande, learned counsel for the State of U.P.

Hon'ble Prafulla C. Pant, J.

1. By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioner has sought mandamus directing the respondents to consider the case of the petitioner for appointment on compassionate ground under the U.P. Recruitments of Dependants of Government Servants Dying in Harness Rules 1974.

2. Brief facts of the case as narrated in the writ petition are that Shri Mathura Dutt Sharma, father of the petitioner, was posted as Junior Engineer in the Public Works Department at Rudrapur, District Udham Singh Nagar, who died in harness on 5.3.2002 leaving behind

his widow, two sons (including the petitioner) and one unmarried sister. On 27.5.2002 (copy annexure-1 to the writ petition) mother of the petitioner moved an application before respondent no. 3 & 4 for employment of her younger son on compassionate ground. Respondent no. 3 & 4 vide their reply dated 29.7.2002 and 5.8.2002 (copy annexure 2 and 3 to the writ petition) informed the mother of the petitioner regarding rejection of request made by her, and suggested that she may approach to Principal Chief Engineer, Public Works Department U.P. Lucknow. Thereafter petitioner's mother submitted an application dated 20.8.2002 (copy annexure-4 to the writ petition) to the Principal Chief Engineer, P.W.D. U.P. Lucknow Again, on 26.6.2002 by another letter (copy annexure 6 to the writ petition) this time petitioner himself got moved his application to the Principal Chief Engineer, P.W.D. U.P. Lucknow through respondent no.4 for his appointment to the post of Legal Assistant on compassionate ground but still no order were passed even after reminders been sent in the matter, to the State of Uttaranchal as well as to the State of U.P. Hence the writ petition.

3. A counter affidavit has been filed on behalf of the respondent no. 1 to 4 in which it has not been denied if Shri Mathura Dutt Sharma was not an employee with the respondent and nor is there denial that he died in harness. However, it has been stated in the counter affidavit that he (Sri Mathura Dutt Sharma) opted for the State of U.P. as such the petitioner can not seek appointment on compassionate ground in the State of Uttaranchal. It is further stated in the counter affidavit that

the petitioner can seek appointment under U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules 1974 in the State of U.P. It has not been disputed in the counter affidavit that the petitioner is qualified for his appointment on compassionate ground. On behalf of the State of U.P. no counter affidavit has been filed.

4. I heard learned counsel for the parties and perused the affidavit, counter affidavit and rejoinder affidavit along with annexures annexed thereto.

5. The short question for consideration before this court is whether the petitioner is wrongly denied the appointment on compassionate ground by the respondents.

6. Admittedly Shri Mathura Dutt Sharma was a Junior Engineer with the Public Works Department and was posted at Rudrapur (District Udham Singh Nagar), at the time of his death. The entire dispute relates as to the point if the petitioner is entitled to appointment on compassionate ground on the death of his father if so in which State. Before further discussion in the matter, it is pertinent to mention here the relevant provision of law as to the status of the employee working in the territory of Uttaranchal before his allocation to either of the successor States i.e. State of Uttaranchal and State of U.P.. Section 75 of U.P. Reorganization Act, 2000 reads as under:

> *75. "Every person who, immediately before the appointed day, is holding or discharging the duties of any post or office in connection with the affairs of the existing State of Uttar*

Pradesh in any area which on that day falls within any of the successor States shall continue to hold the same post or office in that successor State, and *shall be deemed, on and from that, to have been duly appointed to the post or office by the Government of, or any other appropriate authority in that successor State.* ……”

The above Section under U.P. Reorganization Act makes it very clear that the employees who were working in the territory of Uttaranchal on the date of its creation of the new State shall continue to hold their office in that State and shall be deemed to have been duly appointed to the post or office by the Government of said State. As such the allocation of employee under Section 73 has no effect till the date of their relieving after allocation to another State. Otherwise also the deceased was working under the officers of the Government of Uttaranchal and was drawing salary from the Government of Uttaranchal on the date of his death. As such from no strech of imagination liability to appoint dependants of the deceased employee can be shifted from the State where the deceased was working to the State where he would have joined after allocation. In these circumstances the stand taken by Respondent No. 1 to 4 and reason given by them for not considering the appointment of the petitioner or any other dependent of deceased employee, is un-reasonable and against the provisions of Law. It is pertinent to mention here that U.P. Recruitments of Dependants of Government Servants Dying in Harness Rules 1974 are still applicable in the State of Uttaranchal, as

Uttaranchal Recruitments of Dependants of Government Servants Dying in Harness Rules 2002 had been withdrawn and repealed on 31st October, 2002.

7. Therefore, in view of the above discussion, this court disposes of this writ petition with the mandamus that the respondent no. 1 to 4 shall consider the case of dependants of deceased employee Sri Mathura Dutt Sharma for giving employment to one of them to the Class IV or Class III post, as the case may be, under U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules 1974 (applicable in Uttaranchal) provided the person concerned is qualified for the appointment. No order as to costs.

(Prafulla C. Pant, J.)

Dated: 28th October, 2004.

P. Bandhavakar